

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	6:13-170-1
)	
-versus-)	December 10, 2013
)	
)	Greenville, SC
GORDON L. HALL,)	
Defendant.)	

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE J. MICHELLE CHILDS
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Government:	WILLIAM J. WATKINS, JR, AUSA US Attorney's Office 55 Beattie Place, Ste. 700 Greenville, SC 29601
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For the Defendant:	BENJAMIN T. STEPP, ESQ. Federal Public Defender 75 Beattie Place, Ste. 950 Greenville, SC 29601
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Court Reporter:	KAREN E. MARTIN, RMR, CRR 300 E. Washington Street Room 304 Greenville, SC 29601
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The proceedings were taken by mechanical stenography and
the transcript produced by computer.

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

1 Tuesday, December 10, 2013

2 THE COURT: Let's bring Mr. Gordon Hall in,
3 please.

4 (WHEREUPON, Defendant Gordon Hall came into open
5 court.)

6 THE CLERK: Mr. Hall, would you please raise
7 your right hand for the affirmation oath, please.

8 MR. GORDON HALL: Would it be all right if I
9 just affirm under penalty of perjury?

10 THE COURT: Just listen to her question.

11 (WHEREUPON, the defendant was affirmed.)

12 MR. GORDON HALL: It would be my solemn
13 affirmation.

14 THE COURT: Mr. Hall, the Court is informed that
15 you wish to change your prior plea of not guilty to either
16 a plea of guilty or nolo contendere; is that correct?

17 MR. GORDON HALL: To nolo contendere is correct,
18 Your Honor.

19 THE COURT: Okay. And before I can accept your
20 plea of nolo contendere, it's necessary for me to make sure
21 that your plea is made freely and voluntarily. Therefore,
22 I will have to ask you certain questions, relay certain
23 statements to you to make sure that you understand, again,
24 that your plea is entered into freely and voluntarily.
25 Please let me know if you don't understand a question or a

1 statement that I make to you so that I can restate it or
2 rephrase it. Otherwise, is it fair to assume that you
3 understand the question or statement when you respond to
4 it?

5 MR. GORDON HALL: That would be a fair
6 statement, Your Honor.

7 THE COURT: Okay. And to the extent you need to
8 speak with your attorney at any time during the
9 proceedings, just let me know and I'll allow the two of
10 you to step aside. Okay?

11 MR. GORDON HALL: Thank you, Your Honor.

12 THE COURT: Okay. Now, do you understand that
13 you are now under oath. And if you answer any of my
14 questions falsely, your answers may later be used against
15 you in another prosecution for perjury or making a false
16 statement?

17 MR. GORDON HALL: Yes.

18 THE COURT: How old are you?

19 MR. GORDON HALL: 60.

20 THE COURT: And how far did you go in school?

21 MR. GORDON HALL: Through high school.

22 THE COURT: Do you clearly know how to --

23 MR. GORDON HALL: Excuse me. I'm assuming --
24 excuse me, Your Honor. You're requesting formal public
25 education?

1 **THE COURT:** Yes, public or private.

2 **MR. GORDON HALL:** That's correct.

3 **THE COURT:** Okay. And do you understand clearly
4 how to read, write, and speak the English language?

5 **MR. GORDON HALL:** I think I have a reasonable
6 grasp on the language, Your Honor.

7 **THE COURT:** Okay. Anything that has prohibited
8 you from having communications with your attorney or with
9 the Court in any regard?

10 **MR. GORDON HALL:** Not that I'm aware of at this
11 time.

12 **THE COURT:** Are you under the influence of any
13 alcohol, drugs, or medications, even if prescription
14 medication?

15 **MR. GORDON HALL:** No.

16 **THE COURT:** Have you ever been evaluated for
17 your mental or psychological health?

18 **MR. GORDON HALL:** A question, Your Honor?

19 **THE COURT:** Any type of evaluation from a
20 psychologist, psychiatrist, or even an evaluation
21 reflecting your mental health?

22 **MR. GORDON HALL:** Would the evaluation that was
23 ordered by this Court previously be considered such?

24 **THE COURT:** That would be sufficient. Thank
25 you. Okay. And in that evaluation, you were found to be

1 competent; is that correct?

2 MR. GORDON HALL: That is what the report stated
3 to the best of my knowledge.

4 THE COURT: Do you have any disagreement with
5 that finding?

6 MR. GORDON HALL: Do we define competency as
7 capable of handling one's own business?

8 THE COURT: And knowing legal right from wrong.

9 MR. GORDON HALL: In that capacity -- I'm not
10 trying to be difficult here, Your Honor. In the legal
11 capacity, obviously, previously I have not always been in
12 honor with this Court, specifically April 10th and a few
13 other times, September 9th, wherein I didn't understand my
14 duties and responsibilities. So at that time I could say
15 I might have thought I understood it but I, obviously, did
16 not. And I see that today clearly. Today I believe that
17 I understand them.

18 THE COURT: Okay. And any conditions with your
19 mental health affecting your ability to proceed today?

20 MR. GORDON HALL: I don't believe so, Your
21 Honor.

22 THE COURT: Okay.

23 And is counsel aware of any condition affecting
24 his mental health or his competency?

25 MR. STEPP: I have no issues that he's competent

1 to proceed on this hearing today and this whole process.

2 **THE COURT:** Okay.

3 Well, the Court would so find that you are
4 competent to plead to the charges that are before the
5 Court. And I so find for purposes of the record.

6 Now, have you had enough time to speak with your
7 attorney about the nature of your charges, your maximum
8 possible punishment, and your constitutional rights?

9 **MR. GORDON HALL:** I have, Judge.

10 **THE COURT:** Has your attorney also shared with
11 you evidence that the Government has that it intended to
12 use against you if this case were to go to trial?

13 **MR. GORDON HALL:** He has offered to do such.

14 **THE COURT:** Okay. Are you satisfied with your
15 attorney's representation?

16 **MR. GORDON HALL:** As it relates to your
17 question, I believe that his representation in this matter
18 is -- I don't have any problem with. In the capacity, I
19 mean, I've attempted to terminate Ben Stepp because I felt
20 that that would be a problem to have -- receive a public
21 benefit while one is trying to personally be responsible
22 for the charges.

23 **THE COURT:** But did it have anything to do with
24 any dissatisfaction on your part as to him?

25 **MR. GORDON HALL:** Only to the extent as

1 previously indicated.

2 **THE COURT:** Okay. Now, is there anything
3 additionally you'd like for Mr. Stepp to do at this time?

4 **MR. GORDON HALL:** I have no requests of
5 Mr. Stepp previously nor at this time.

6 **THE COURT:** Okay. And then, again, if you need
7 to speak with him at all during the proceedings, just let
8 the Court know.

9 Now, do you understand that under the
10 constitution and laws of the United States, you have the
11 right to plead not guilty. And if you plead not guilty,
12 you are entitled to a trial by a jury on the charges
13 contained in the indictment?

14 **MR. GORDON HALL:** Yes, Your Honor.

15 **THE COURT:** If you decided to plead not guilty
16 and request a trial by jury, you would also be entitled to
17 a number of procedural rights as the defendant. And I
18 want to list these rights for you so that you will have a
19 clear understanding of what you will give up if you plead
20 guilty.

21 At a trial you would have the right to the
22 assistance of counsel for your defense. You would be
23 presumed to be innocent. And the Government would be
24 required to prove you guilty by competent evidence and
25 beyond a reasonable doubt before you could be found

1 guilty. And you would not have to prove that you were
2 innocent.

3 You would also have witnesses for the Government
4 who would have to come to court and testify in your
5 presence. And your attorney could cross-examine the
6 witnesses for the Government, object to evidence offered
7 by the Government, and offer evidence on your behalf.

8 And while you would have the right to testify if
9 you chose to do so, you also have the right not to
10 testify. And if you decided not to testify, I would have
11 to inform the jury that they could not consider your
12 failure to testify in any regard and certainly not in
13 their deliberations should this case go to trial.

14 You would also have the right to the issuance of
15 subpoenas to compel the attendance of witnesses to testify
16 in your defense.

17 Do you understand these rights I have just
18 outlined for you?

19 **MR. GORDON HALL:** Yes, Your Honor.

20 **THE COURT:** Do you understand that if you plead
21 nolo contendere and I accept your plea, you will give up
22 your right to a jury trial and the other rights I have
23 just listed for you, there will be no trial, and I will
24 enter a judgment of guilty or nolo contendere and sentence
25 you on the basis of your guilty or nolo contendere plea?

1 **MR. GORDON HALL:** Yes, Your Honor. As long as
2 it's in concert with the plea agreement, yes.

3 **THE COURT:** Okay. And what plea agreement are
4 you referring to?

5 **MR. GORDON HALL:** The plea agreement that was
6 before this Court that's been entered into this court
7 between the Defendant and the Government --

8 **THE COURT:** Okay.

9 **MR. GORDON HALL:** -- dated November 25th.

10 **THE COURT:** Okay. There -- my understanding is
11 that the Government offered you and Mr. Benton Hall a
12 written plea agreement. Have you accepted that plea
13 agreement?

14 **MR. GORDON HALL:** Which plea are you speaking
15 of? The first one that they offered?

16 **THE COURT:** Yes.

17 **MR. GORDON HALL:** We have worked out a
18 subsequent plea agreement between the parties, Your Honor,
19 as presented to this Court.

20 **THE COURT:** Okay. So is the answer to my first
21 question that you have not accepted the original plea
22 agreement offered?

23 **MR. GORDON HALL:** We countered that, Your Honor.

24 **THE COURT:** Okay. So does your countering
25 indicate that you have not accepted the plea agreement

1 that they have written just as it was stated?

2 MR. GORDON HALL: I think we accepted the plea
3 agreement with some modifications.

4 THE COURT: Okay. And the plea agreement that
5 you're referring to, is that Entry No. 175 that's entitled
6 Notice of Entry of amended plea agreement dated
7 December 9, 2013?

8 MR. GORDON HALL: Yes, Your Honor.

9 THE COURT: And then it had that as three pages.
10 And then attached to it is Entry No. 175-1, Amended Plea
11 Agreement dated the same date. Is that what you're
12 referring to?

13 MR. GORDON HALL: Yes, Your Honor.

14 THE COURT: Now, you understand that this was
15 entered on the system as a Notice of Entry of Amended Plea
16 Agreement. So it has not been accepted by the Court. It
17 is just a filing at this point.

18 MR. GORDON HALL: If my understanding is correct
19 that I understand that and it's subject to accepting the
20 nolo contendere plea.

21 THE COURT: Okay.

22 Now, Mr. Watkins, have you, for purposes of this
23 record, received or been notified of this Entry No. 175
24 and 175-1?

25 MR. WATKINS: Yes, ma'am.

1 **THE COURT:** Okay. Have you in any way accepted
2 it orally or in writing?

3 **MR. WATKINS:** No, ma'am.

4 **THE COURT:** Okay.

5 Is that what you understand, Mr. Gordon Hall?

6 **MR. GORDON HALL:** I understand that mutual
7 assent has been effectuated in this case.

8 **THE COURT:** And what's your basis for that?

9 **MR. GORDON HALL:** Is it not true that the public
10 policy -- a couple of the primary principles of public
11 policy relating such that one of them is reasonable
12 expectations? Do I not have a right to expect in the --
13 let me see if I can --

14 **THE COURT:** But when you refer to mutual assent,
15 that assumes that someone is in agreement with you.
16 That's what the term mutual would mean. So who are you
17 referring to when you say mutual assent?

18 **MR. GORDON HALL:** The Government.

19 **THE COURT:** Okay. Mr. Watkins has just
20 represented that neither orally or in writing has he
21 accepted this, Document No. 175 and 175-1.

22 **MR. GORDON HALL:** That's a true statement.

23 **THE COURT:** Okay.

24 **MR. GORDON HALL:** However --

25 **THE COURT:** Okay.

1 **MR. GORDON HALL:** Did you ask him if he tacitly
2 acquiesced and did he not receive a second notice and a
3 subsequent third notice regarding said plea agreement to
4 which he tacitly acquiesced to? And do I not have a
5 right --

6 **THE COURT:** Mr. Watkins, are you aware of any
7 other documents that have come in to you since these
8 entries?

9 **MR. WATKINS:** Your Honor, he's -- I'm aware that
10 Mr. Hall's sent me a number of pieces of paperwork
11 regarding these agreements.

12 **THE COURT:** And this agreement is dated
13 December 9. Today is December 10. So I'm saying since
14 this one.

15 **MR. WATKINS:** I don't think I got anything since
16 yesterday. But, of course, his paperwork indicated that
17 unless I responded to him in writing that, you know, I was
18 in default and he would hold me in default. But as far as
19 Your Honor's held that the Uniform Commercial Code and
20 such doesn't apply in this case, I disregarded those
21 notices.

22 **THE COURT:** The other thing is the Court put an
23 order in that said since you are now represented by
24 counsel, you and Mr. Benton Hall are not to file any
25 individual documents with the Court. All such

1 communications to the Government should go through your
2 counsel.

3 I did allow an exception when I realized that
4 you all were attempting to negotiate to allow Mr. Watkins,
5 and anyone on his behalf as the Government, to come in
6 your presence with your attorneys and speak directly to
7 you so that there would be no miscommunication about what
8 your questions were to the Government and what the
9 Government's responses were to you. So I did allow that
10 exception.

11 But outside of that, the Court's order was that
12 once you were represented by counsel to have no further
13 communications with the Government. So that is part of
14 potentially why he has not responded.

15 **MR. GORDON HALL:** Well, let me ask this --

16 **THE COURT:** Because you're represented by
17 counsel. And it's not legal or ethical for him to respond
18 to you outside of your counsel.

19 **MR. GORDON HALL:** Let me ask this. Is it legal
20 or ethical to deny due process and equal protection under
21 the law? Is he not required -- is any of us not required,
22 before the taking of life, liberty, or property, due
23 process and equal protection under the law? And do I not
24 have a right --

25 **THE COURT:** You're getting due process now as

1 we're here for this hearing.

2 MR. GORDON HALL: -- under --

3 THE COURT: But when I asked you --

4 MR. GORDON HALL: -- under nolo contendere --
5 excuse me, Your Honor. You're speaking. Allow me to --

6 THE COURT: Go ahead.

7 MR. GORDON HALL: -- shut up for a moment.

8 THE COURT: Well, you're getting due process
9 now. We're having this hearing that allows you to
10 indicate your intentions with respect to the charges
11 against you and whether or not you wish to plea guilty or
12 not.

13 MR. GORDON HALL: Excuse me.

14 THE COURT: One moment.

15 (WHEREUPON, the Court spoke with the law clerk
16 privately.)

17 THE COURT: So I need, while you have this on
18 the system as a notice of a document, Mr. Watkins, on
19 behalf of the Government has stated that he didn't in
20 writing or orally accept the plea agreement.

21 Mr. Watkins, I'd like to take it a step further.
22 Upon your review of it, do you have any intention of any
23 further consideration or deliberations over this to try to
24 accept it?

25 MR. WATKINS: No, ma'am. I explained to

1 Mr. Hall when I went to the jail about two weeks ago with
2 Ms. Salvini and Mr. Stepp and Agent Durgin what the
3 Government's plea offer would be and the paperwork we
4 required, explained to him I would not be further
5 responding to the documents that he sent to me and, you
6 know, no, I'm not going to consider the -- his latest
7 filing with the Court.

8 **THE COURT:** Okay.

9 He has indicated that he does not intend to
10 accept your counteroffer amended plea agreement. And so
11 the -- there is no agreement on record that the Court
12 understands between the parties. Do you have a different
13 understanding?

14 **MR. GORDON HALL:** My understanding is -- I
15 understand that he has chosen not to further respond or to
16 continue under a -- if I have it correctly, Judge, correct
17 me if I'm wrong, under nolo contendere has for its purpose
18 the promotion of disposition of criminal cases by
19 compromise. Mr. Watkins sent an offer that deviated from
20 the original offer which was a compromise on his part. We
21 accepted that offer with some changes. Mr. Watkins then
22 responded back to that offer. We then responded back to
23 Mr. Watkins again, to which he then indicated that he
24 would not further respond, which was an indication to me
25 under the rules as I understand them that if he doesn't

1 want to respond, that that's acceptance. Because in
2 modern contract law, mutual assent is determined by an
3 objective standard; that is, by the apparent intention of
4 the parties as manifested by their actions.

5 **THE COURT:** There is an order on the system that
6 says that the defendants now being represented by counsel,
7 and even before that when there was an interim period in
8 which I was giving consideration as to whether or not I
9 would allow you to represent yourself, so there's two
10 orders on system, during that time when I was considering
11 whether or not I would allow you to represent yourselves,
12 I said there should be no more communications, no more
13 filings by you individually.

14 Once I did have that hearing and then determined
15 that I was going to allow Mr. Stepp to represent you, I
16 then reiterated no more filings or communications other
17 than through your counsel. So because Mr. Watkins is held
18 to the professional and ethical responsibilities attendant
19 to his bar license, he could not respond to you directly.
20 He could only respond to your counsel.

21 He is now responding to you in open court to
22 your counsel that he has neither accepted the offer in
23 writing, and I'm referring to the amended plea agreement,
24 he has not done so orally, and he also has no intentions
25 to accept it.

1 So as we stand here, I do not have a plea
2 agreement that has been accepted. And I do not hold him
3 in default for not having accepted it because he has
4 violated no rule since he had to respond through counsel.

5 **MR. GORDON HALL:** I am in agreement with you
6 that he has stated that he did not orally respond or in
7 writing. And I conditionally accept that by his actions
8 or his apparent intention by not responding that I don't
9 have a right to rely under public policy and under the
10 rules of -- and this is all contract because this is --
11 what we're trying to get to is an agreement between the
12 parties, that we don't have a mutual assent by his
13 actions.

14 **THE COURT:** Let me ask you this. We are here
15 because you have indicated to the Court that you wish to
16 change a prior plea of not guilty to a plea of nolo
17 contendere. Is that correct? Is that your understanding
18 of this proceeding?

19 **MR. GORDON HALL:** My understanding of this
20 proceeding is partially that.

21 **THE COURT:** Okay.

22 **MR. GORDON HALL:** The other part is that I've
23 changed that plea of nolo contendere based on the promises
24 in the plea agreement between the parties.

25 **THE COURT:** So you are only going forward on a

1 plea of nolo contendere assuming that you have a plea
2 agreement with the Government; is that correct?

3 **MR. GORDON HALL:** Well, I'm going forward on
4 that basis, not as an assumption but as a presumption;
5 that is, facts indicated, i.e., that -- and I ask this,
6 where -- where, when acting in the capacity responsibly to
7 both set off the substantive charges and follow the
8 procedural rules without any objection thereto in writing
9 does not constitute honorable resolution that should not
10 be opposed.

11 **THE COURT:** Okay. I've indicated, again, there
12 was a point at which you were always represented by
13 counsel. And then there was a point at which I asked,
14 basically, the lawyers to stand down until I evaluated and
15 allowed you to have a hearing to exercise your right to
16 want to be your own counsel and then told you all not to
17 make any individual filings to the Court until we could
18 get through that interim period.

19 Once I got your counsel reinstated and made the
20 decision that it was not knowingly and voluntarily entered
21 for you to be your own counsel, there was another order
22 instituted that said no further filings with the Court.
23 Even though you have made these filings, Mr. Watkins has
24 reviewed them. He's indicated orally and in writing that
25 he has not accepted your amended plea agreement and he has

1 no intentions to do so.

2 I am not going to hold him in default. So,
3 therefore, the original plea agreement has not been
4 accepted by you. You've instead countered. He has
5 rejected that offer.

6 The Court does not engage into these
7 negotiations between the parties with respect to it. I
8 just look to what you have negotiated and then decide
9 whether or not it is fair and equitable under the
10 circumstances.

11 You are indicating to this Court that your
12 intentions to plead nolo contendere here today are subject
13 to the acceptance of this agreement that you believe the
14 Government has accepted. I have made a finding that there
15 is no plea agreement and that the Government has not
16 engaged in any wrongful conduct with respect to accepting
17 or not accepting this particular agreement.

18 So we stand there now as to whether or not this
19 plea can even go forward since you are indicating to the
20 Court it was conditioned on this amended plea agreement.

21 **MR. GORDON HALL:** Allow me to elucidate a little
22 bit regarding my understanding. Your order, as I recall,
23 said the type of filings. And the type of filings, as I
24 understood it at that time, were ones that were not
25 bringing resolution to the matter.

1 And when we altered our filings and grasped an
2 understanding as indicated in the September 9th transcript
3 on, I believe, Page 29 that we needed to -- if we were
4 going to have any resolution, it would be pursuant to the
5 Federal Rules of Criminal Procedure, Rule 11. Rule 11 is
6 as we all understand it. Rule 11, under nolo contendere
7 plea, my understanding is has as its purpose the promotion
8 of disposition of criminal cases by compromise.

9 Mr. Watkins and I entered into negotiations.
10 And if it's on behalf of the Government in accordance
11 with -- I would ask, are you telling me that when, under
12 Bouvier's 8th, if the nation comes down from its position
13 of sovereignty and enters the domain of commerce, it
14 subjects it -- it submits itself to all the rules of
15 commerce that govern individuals therein. It assumes the
16 position of ordinary citizen and it cannot recede from the
17 fulfillment of its obligations.

18 In addition, does not Mr. Watkins, i.e., the
19 Government, have a duty as an implied covenant in good
20 faith and fair dealing to see to it that there's no injury
21 to the benefits of the contract?

22 **THE COURT:** Okay. Even if I assume that it was
23 okay for you to file this particular amended plea
24 agreement to indicate your intentions to the Government
25 about the counteroffer to their original offer, even if we

1 allowed that to be accepted, in this particular amended
2 plea agreement, you make such statements as indicated on
3 Entry No. 175-1, Page 3, for example, in Paragraph 7(a),
4 that your desire is to have the Court to suspend all
5 further imprisonment on the Defendant Gordon L. Hall on
6 any sentence on the basis of being in the interest of the
7 public in effective administration of justice. And in
8 7(b), you're also indicating that supervised release in
9 this matter will be either suspended or unsupervised.

10 Do you understand that even entering a plea of
11 nolo contendere, we will get a Presentence Investigation
12 Report from probation. It will indicate what your
13 sentencing guidelines are. Those guidelines can include a
14 term of imprisonment. It can also include supervised
15 release to be followed by that term of imprisonment. It
16 could include restitution to be owed by you. This
17 agreement does not reflect that you would have any of
18 those types of things in terms of any period of sentence
19 for you. And so the Court does not even have to accept
20 this agreement.

21 You need to understand that a plea of nolo
22 contendere does not indicate that there will be no jail
23 time, no supervised release, no restitution, and
24 essentially a wash of your criminal charges. The Court
25 still gets to sentence you on the basis of the facts

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

1 tendered to this Court by the Government because nolo
2 contendere means that you are not contesting that
3 information. You're not admitting to it, but you're not
4 contesting it either. So I would have to take all of that
5 into consideration to fashion any appropriate sentence.

6 So this agreement does not reflect you
7 understand that it's still the Court's prerogative with
8 respect to sentencing. It's my authority.

9 **MR. GORDON HALL:** Allow me to elucidate. I
10 don't have any problem with you sentencing the defendant
11 at all, so long as it's in accordance with said plea
12 agreement.

13 **THE COURT:** But there is no plea agreement.

14 **MR. GORDON HALL:** In the November 5th -- 25th
15 plea agreement submitted to this Court. I understand your
16 position where you indicated -- you indicated -- I've lost
17 my thought on that. It was an important point. You
18 indicated that --

19 **THE COURT:** Okay. And just so we're clear, you
20 keep referring to November 25th. I don't have any
21 document filed as November 25th. I believe you're
22 referring to Entry No. 175 in that you've signed it and
23 dated it November 25th. But it's actually been filed with
24 the Court on December 9.

25 **MR. GORDON HALL:** Well, under the mailbox rule,

1 is it not deemed received on the day it's put into the
2 mail?

3 **THE COURT:** Well, I'm not suggesting your dates
4 are wrong. I'm just saying that when you keep saying
5 that, I want to make sure the record is clear that you're
6 still referring to this amended plea agreement dated
7 November 25, 2013, although filed in this court on
8 December 9, 2013. But it's the same document.

9 **MR. GORDON HALL:** I believe we're speaking of
10 the same document.

11 **THE COURT:** Okay. That's fine.

12 **MR. GORDON HALL:** I'm just not in the position
13 to seek --

14 **THE COURT:** I wanted to make sure there wasn't
15 an additional document out there.

16 **MR. GORDON HALL:** If the Court chooses after
17 receiving a document within a couple of days of the 25th
18 and wants to hold it for nine days or ten days or two
19 weeks before they file it, I'm not in position to compel
20 them to do anything other than that.

21 **THE COURT:** Well, the Court, apparently with its
22 stamp, received the document on December 9. So while you
23 dated it one day, that's the date it actually got
24 receipted in the courthouse and was entered on the same
25 day.

1 **MR. GORDON HALL:** Perhaps you could ask the
2 Clerk of the Court, was there not a certificate of service
3 indicating it was put in the mail on the 25th?

4 **THE COURT:** It may have been but we file it when
5 we receive it.

6 **MR. STEPP:** Judge, if I could just?

7 **THE COURT:** Sure.

8 **MR. STEPP:** I have document -- ECF Document 175
9 and 175-1 in front of me on the table. And if Mr. Hall
10 can look at those and verify we're all talking about --
11 you're all talking about the same thing, then it might
12 clarify. The dates might be not particularly relevant.

13 **THE COURT:** Not particularly relevant, exactly,
14 because even though the 175, it says, Respectfully
15 submitted this 4th day of December, with a signature
16 there.

17 **MR. STEPP:** Is that your signature there? And
18 that there?

19 **MR. GORDON HALL:** We have a date of 11/25/13. I
20 think we have a certificate of service --

21 **THE COURT:** That's for the 175-1. And if you go
22 to the 175, it says, Respectfully submitted this 4th day
23 of December 2013.

24 **MR. STEPP:** Judge, also, Entry No. 177
25 indicates -- the certificate of service he's referring to

1 purports to have his signature and Benton Hall's signature
2 saying that they mailed this stuff on December the 4th.

3 THE COURT: Okay. So regardless, we're still
4 talking about the amended plea agreement.

5 MR. GORDON HALL: I think we're still talking
6 the same document.

7 THE COURT: Okay. That's fine. But this
8 document has not been accepted by the Government. Even if
9 we allow the fact that they could consider it, it's not
10 been accepted by them. And my question to you is, is your
11 plea of nolo contendere contingent upon an acceptance of a
12 plea agreement?

13 MR. GORDON HALL: Allow me to address that
14 acceptance first, Your Honor, if I may?

15 THE COURT: Okay.

16 MR. GORDON HALL: I conditionally accept your
17 offer that the Government didn't accept that on proof of
18 claim that receiving that document and choosing to ignore
19 it still doesn't constitute -- an acceptance is defined as
20 an offeree's assent either by express act or implication
21 from conduct to the terms of an offer so that a binding
22 contract is formed. The fact that the Government
23 chooses -- and I agree with him where he said he did not
24 orally or in writing. However, does he want to take the
25 position that he's not bound by the rules of --

1 **THE COURT:** Well, let me ask you this.

2 **MR. GORDON HALL:** -- contract law --

3 **THE COURT:** Mr. Watkins, since you --

4 **MR. GORDON HALL:** -- constitutional safeguards
5 and protections?

6 **THE COURT:** Mr. Watkins, did you get this
7 document in any way other than just through the ECF
8 system? Was it mailed to your office or did you only get
9 it through the filing?

10 **MR. WATKINS:** I'm pretty sure that he or someone
11 on his behalf mailed it as well. I got hard copies in my
12 mailbox.

13 **THE COURT:** Okay. Did you receive it before
14 December 9? Do you know?

15 **MR. WATKINS:** I got it yesterday or day before,
16 Your Honor.

17 **THE COURT:** Okay. So even then, we're just
18 talking a couple of days. Yesterday was Monday, the day
19 before was Sunday. So even if you got it on Saturday and
20 somehow was at the office and got that mail, we're talking
21 two days.

22 So now upon having reviewed the document, he's
23 indicated he does not intend to accept it. So the timing,
24 I don't want us to get sidetracked with all these dates.
25 The issue is whether or not there is a plea offer in this

1 case.

2 MR. GORDON HALL: Excuse me, Your Honor. Maybe
3 we could ask him. You could ask Mr. Watkins did we not
4 meet on November 25th?

5 THE COURT: And he understands -- I understand
6 that you all did meet.

7 MR. GORDON HALL: Were you in possession of
8 essentially this document on November 25th, this plea
9 agreement?

10 Excuse me, I should be addressing you, Your
11 Honor.

12 THE COURT: Right. I believe Mr. Watkins has
13 responded what he told you at that meeting.

14 If you'd like to state what your responses were
15 with respect to the plea agreements.

16 MR. WATKINS: Sure. We met and Mr. Hall was
17 very respectful, very pleasant that day. I explained to
18 him that the plea agreement I had, we had to work from
19 that per my office's policy. He didn't seem to like that
20 too much. He said he would be sending me additional
21 documents and be in contact. I told him, I said, No
22 disrespect, but if you call me, I'm going to have to hang
23 up on you because I can't talk with you because you're
24 represented by counsel. I'm not disrespecting you. I
25 just can't communicate directly with you. And he told me,

1 Well, respond in writing. I said, I'm not going to.

2 He has, you know, sent these documents,
3 continues to send them and file them. And, you know,
4 obviously, Judge, he's got the understanding that even
5 though you've ruled the Uniform Commercial Code doesn't
6 apply to this case, he's got some sort of
7 battle-of-the-forms mentality, UCC contract law that by me
8 not responding to his last submission that I've accepted
9 it, like some law school case with a battle of the forms
10 that we saw dealt with years ago.

11 You know, I told him I wouldn't respond to it.
12 These principles don't govern. If he wants to enter a
13 plea, he's going to have to accept the Court's ruling that
14 there's no plea agreement.

15 And we might even could short circuit this. I
16 would doubt, even if somehow I had accepted that, you
17 know, the Court has to accept the plea agreement. And
18 with no jail time, no supervised release, even if I went
19 and put my John Hancock on it right now, I would imagine
20 that Your Honor would say, well, I'm not going to accept
21 this. This isn't right for this type of case. So it's
22 sort of a moot point anyway.

23 **MR. GORDON HALL:** Let me ask a couple of
24 questions, Your Honor, first please?

25 **THE COURT:** All right.

1 And then, just quickly. Mr. Stepp, are you
2 aware of any representations that the Government made that
3 do not match up with Mr. Watkins with respect to accepting
4 or not accepting the plea agreement?

5 **MR. STEPP:** No, ma'am. He -- there was never
6 any -- even any appearance of acquiescence that if he came
7 back with some other offer, the Government might somehow
8 accept it. As I read this plea agreement, proposed plea
9 agreement, which I got on the ECF yesterday, it is -- the
10 defendant says, well, we will plead to -- Gordon Hall
11 would plead to Count 2. The Government would dismiss all
12 remaining counts. And then the things that the Court
13 referred to in Paragraph 7 regarding no jail time, no
14 supervised release, all of the things about restitution
15 has been provided for, all that kind of stuff, those were
16 things that the Government told us in the meeting and told
17 Mr. Hall in the meeting that, you know, they had their
18 form. And that that's the only document that they were
19 going to be operating off of. And if he -- they didn't
20 want to accept it, then that was that and he wouldn't
21 providing individualized or detailed responses to any
22 counterproposals.

23 **THE COURT:** Okay.

24 I'll find that the Government has no --

25 **MR. GORDON HALL:** Excuse me, Judge.

1 THE COURT: Yes?

2 MR. GORDON HALL: I need to ask a couple of
3 questions first.

4 THE COURT: Okay.

5 MR. GORDON HALL: Is it both Mr. Stepp's and
6 Mr. Watkins' position that they didn't bring and weren't
7 in possession of a document entitled Amended Plea
8 Agreement in the November 25th hearing where we had? And
9 number two, was it -- is it their position that they're
10 denying that they re -- that their secretary of --

11 THE COURT: The issue is whether or not they're
12 accepting this document. And even if they do, meaning the
13 Government, the Court has to decide whether or not it will
14 accept the document in terms of the plea.

15 And so the Government has indicated, very
16 emphatically, it did not accept this amended plea
17 agreement orally or in writing. And then the Court, even
18 if the Government had accepted it, upon review of it finds
19 that the defendants are requiring that they have no
20 imprisonment, no supervised release, that the Government
21 accept all payments to setoff and settle any charges, and
22 that basically there is a hundred percent setoff
23 stipulated by this private record to give them full credit
24 for everything. The Court would not accept such a plea
25 agreement under the circumstances of this case.

1 **MR. GORDON HALL:** Excuse me, Judge.

2 **THE COURT:** So therefore, for purposes of your
3 plea to go forward, there will be no plea agreement under
4 this document in this case. So you can only plead knowing
5 that there is no plea agreement here.

6 **MR. GORDON HALL:** Your Honor, I conditionally
7 accept your offer that you said there's no jail time on
8 proof of claim that that document doesn't say that it's
9 for time served, which is already at nine months, and
10 allow you to assess any other amount of time in accordance
11 with that agreement. And --

12 **THE COURT:** But --

13 **MR. GORDON HALL:** Excuse me, Judge. Allow me to
14 finish.

15 **THE COURT:** -- even if I allow time served --

16 **MR. GORDON HALL:** Please allow me to finish.

17 **THE COURT:** Hold on a second. You are stating
18 that no other jail time. The Court won't accept that
19 agreement. The Court needs to be able to sentence you as
20 appropriate --

21 **MR. GORDON HALL:** Excuse me, Your Honor. Excuse
22 me, Your Honor. You can assess whichever jail time you
23 want just in accordance to the agreement --

24 **THE COURT:** But there is no agreement.

25 **MR. GORDON HALL:** -- between the parties.

1 **THE COURT:** There is no agreement. There is no
2 agreement. And I've ruled there is no agreement.

3 **MR. GORDON HALL:** Judge, excuse me. And I
4 conditionally accept that on proof of claim that the
5 apparent intention of the parties as manifested by their
6 actions and under contract law doesn't indicate that there
7 is an agreement. And that there -- and that to deny said
8 agreement wouldn't constitute a trespass on both the
9 substantive agreement between the accommodation party and
10 the United States of America, the plaintiff. And number
11 two, the agreement in form and understanding between the
12 parties -- between the defendant and the Government as
13 went forward under a properly implemented plea agreement
14 procedure conducted between the Government and the
15 defendant, and that some of these facts that have been
16 stated here earlier by Mr. Stepp and Mr. Watkins
17 indicating that they did not receive that amended plea
18 agreement on the 25th, or on the 27th that Mr. Watkins
19 didn't receive also the email on the second notice, but on
20 the 25th he received an email of the amended that was sent
21 and put in the mail on the 25th, as well as I believe that
22 the Notice of Default Consent to Judgment, that he not
23 only received it by email on the day, and I don't recall
24 which day it was, it would have been I believe the
25 Wednesday after Thanksgiving.

1 **THE COURT:** He has indicated he has seen this
2 agreement and he does not accept it. Okay? So regardless
3 of all these dates --

4 **MR. GORDON HALL:** Yeah, but even if he didn't
5 orally or in writing accept it, that doesn't mean -- and I
6 conditionally accept that doesn't mean that there isn't an
7 acceptance by the apparent intention of Mr. Watkins --

8 **THE COURT:** Okay. But the Court has ruled
9 otherwise.

10 **MR. GORDON HALL:** -- made manifest by his
11 actions.

12 **THE COURT:** Okay. The Court has ruled
13 otherwise. I find that there is no plea agreement in this
14 case; that is, the original plea agreement as indicated by
15 the Government as well as this amended plea agreement
16 under Entry No. 175 and 175-1 as there is no meeting of
17 the minds. I find that the Government --

18 **MR. GORDON HALL:** Excuse me, Judge.

19 **THE COURT:** Hold on. I find the Government did
20 not assent to such agreement. And even if it had, based
21 on all of the information contained herein and the nature
22 and circumstances of these particular charges as well as
23 the charges for which you are standing before this Court,
24 that the Court would not have accepted this particular
25 plea agreement.

1 This plea of nolo contendere as offered by
2 Mr. Gordon L. Hall appears to be conditioned on the plea
3 agreement and such plea agreement has not been accepted by
4 this Court. Therefore, I also find that he has not
5 knowingly, intelligently, and voluntarily entered into
6 this plea because it is conditioned on this plea
7 agreement.

8 **MR. GORDON HALL:** Excuse me, Judge.

9 **THE COURT:** Yes?

10 **MR. GORDON HALL:** I conditionally accept that on
11 proof of claim that under -- under the constitution I
12 don't have the right to due process and equal protection
13 under the law, that you're not trespassing on a contract
14 between the Government and the defendant as well as a
15 contract between the accommodation party and the
16 plaintiff.

17 **THE COURT:** Okay. I've heard enough.

18 I'm sorry, gentlemen, but the plea is off. We
19 are going to proceed to trial. I will get with counsel
20 with respect to Mr. Gordon Hall to find out what dates
21 work for you all.

22 If Mr. Benton Hall, which we gave a recess for
23 his case, we'll have him come back in here, we will make
24 the individual determination on his case --

25 **MR. GORDON HALL:** Excuse me, Judge.

1 **THE COURT:** -- but with respect to this case, we
2 will come up with a date.

3 **MR. GORDON HALL:** Excuse me.

4 **THE COURT:** The only way that this case will not
5 go to trial is if there is a true plea agreement that the
6 Court would look to ahead of time and give some
7 consideration as to whether to accept it. Right now,
8 there is no acceptance of responsibility that will be
9 allowed for purposes of the Presentence Investigation
10 Report.

11 **MS. SALVINI:** Can I just -- Your Honor,
12 Ms. Salvini for Mr. Benton Hall, since I've been in the
13 courtroom during this proceeding. If we can just -- if I
14 can make clear on the record, so I can explain to
15 Mr. Benton Hall and maybe this would also help explain to
16 Mr. Gordon Hall, when the Court says unless there's a plea
17 agreement between the Government and Mr. Gordon and Benton
18 Hall that is actually signed with Mr. Watkins' specific
19 signature --

20 **THE COURT:** Or a representative in his office
21 for some reason if he was busy or could not be on this
22 case --

23 **MS. SALVINI:** Okay.

24 **THE COURT:** -- then it has to be an authorized
25 agreement. It cannot be constructively done, orally done.

1 It has to be as to the Court's understanding that that is
2 the true intentions of the Government with respect to any
3 plea agreement.

4 MS. SALVINI: Thank you, Your Honor.

5 MR. GORDON HALL: Excuse me, Judge.

6 And allow me -- allow me a moment, Mr. Stepp.

7 Your Honor, you made a statement that
8 Mr. Watkins has not a meeting of the minds. Under
9 classical contract law, that's true. Under modern
10 contract law, that's -- that is not the way things are
11 done under modern contract law.

12 THE COURT: Mr. Gordon Hall, I have ruled --

13 MR. GORDON HALL: Allow me to finish, Judge.

14 THE COURT: I have ruled. I'm done. I'm done.
15 I've given you more than ample time to deal with this --

16 MR. GORDON HALL: I think it's dis -- excuse me.

17 THE COURT: And I believe that we have --

18 MR. GORDON HALL: Excuse me.

19 THE COURT: -- gone over this.

20 MR. GORDON HALL: Allow me to finish talking,

21 Your Honor. I've allowed you to talk. I feel it's
22 improper to allow disingenuous statements by the Judge --
23 and I'm not trying to be disrespectful, Judge --

24 THE COURT: When I said meeting of the minds,
25 he, meaning Mr. Watkins, as a Government representative on

1 this particular case and legal counsel to the Government,
2 has emphatically stated that he has not accepted orally or
3 in writing this amended plea agreement --

4 MR. GORDON HALL: That isn't true, Your Honor.
5 That is a true statement and you continue to obfuscate it
6 with, number one, the meeting of the minds is not required
7 under modern contract law today.

8 THE COURT: Okay. But he has not accepted it.
9 Sir, I'm speaking.

10 MR. GORDON HALL: I was speaking first.

11 THE COURT: He has not accepted --

12 MR. GORDON HALL: Would you please not interrupt
13 me?

14 THE COURT: It's my courtroom. Okay?

15 MR. GORDON HALL: And it's my court case so --

16 THE COURT: It's my courtroom.

17 MR. GORDON HALL: -- would you allow me to --

18 THE COURT: I'm speaking.

19 MR. GORDON HALL: I am also speaking.

20 THE COURT: I'm speaking. Do you need me to
21 have the Marshals escort you out of the courtroom?

22 MR. GORDON HALL: Under threat, duress, and
23 coercion, I'll shut up and allow you to override me and
24 not allow me to speak.

25 THE COURT: He has indicated he has not accepted

1 the agreement. Okay? Even if he had, the Court has made
2 a finding that it will not accept this agreement as
3 written because it is unfair considering the facts and
4 circumstances of this case. I do not find it equitable.
5 I do not find it in the best interests of public policy.
6 So the Court would not accept this agreement even if the
7 Government had based on my reading of this agreement and
8 understanding of the facts and history of this particular
9 case. So that matter is closed as to this agreement.

10 **MR. GORDON HALL:** May I be allowed to use a
11 phone, Your Honor, and contract my counsel?

12 **THE COURT:** Your counsel is right here,
13 Mr. Stepp, on record of this court.

14 **MR. GORDON HALL:** And I'm requesting the use of
15 a phone so I don't waste this Court's time any further and
16 a recess so I can come back in here and deal with this.

17 **THE COURT:** Your counsel is right here.

18 Mr. Stepp, do you have anything else to add?

19 **MR. STEPP:** Just one thing, Judge. The -- in
20 the event that a -- that Mr. Gordon Hall wishes to -- upon
21 reflection decides to request the Court to go forward on a
22 nolo contendere plea, open plea on all counts, no deals,
23 nothing, just his request to the Court to do a no contest
24 plea on all counts, would the Court require anything more?
25 You talked about a plea agreement. I know the

1 Government's position on a nolo plea is that they don't --
2 they can't assent to that.

3 **THE COURT:** Right.

4 **MR. STEPP:** But a nolo plea on all counts, if
5 that's what he wanted to do, would we have to get anything
6 in writing from the Government?

7 **THE COURT:** And I apologize for that. What I
8 meant by that is that he has the ability to go forward on
9 it.

10 **MR. GORDON HALL:** Under the original plea
11 agreement offered by the Government.

12 **THE COURT:** Well, under just on your own without
13 any plea agreement.

14 But I'm saying that any plea agreement in this
15 case has to be in writing. I apologize. I was not trying
16 to suggest that there would only be a going forward if
17 there is a plea agreement. It's just that it has to be
18 signed and executed by the Government appropriately and
19 with authority, not as indicated by defendants in terms of
20 there being some type of acquiescence or assent or
21 constructive signature or things of that nature. So there
22 doesn't have to be a plea agreement. If he wishes to move
23 forward on all counts. Right now, I'm not allowing him to
24 accept responsibility so you would have to talk me out of
25 that.

1 **MR. STEPP:** I understand. And just for the
2 clarification of the record, on Document No. 175 that the
3 Court has referred to, we did -- I've seen this back and
4 forth thing where the Government sends the proposed plea
5 agreement. It was provided to Mr. Hall and his son. They
6 had some written responses, a counterproposal, for lack of
7 a better phrase.

8 We did have a meeting at the detention center in
9 Spartanburg. The Government, as we've already talked
10 about, rejected any change to it. It was their -- it was
11 the Government's offer and that was all they were going to
12 do. There were going to be no amendments, no changes, no
13 difference.

14 They said they would work on something, they
15 being the Halls. They would get back to the Government.
16 They sent, I believe, a second offer and directly, I
17 believe, to the Government.

18 I was cut out of that operation. And this is
19 something they're doing. I didn't come up with these
20 proposed changes or anything. As far as I know,
21 Ms. Salvini didn't come up with any of these.

22 The Government's made it very clear that they
23 have their offer and that was all they were going to do.
24 The Halls have sent them maybe one, maybe two, however
25 many proposed changes, they have been sending them to

1 them.

2 From what I believe I read here is that he
3 believes that they've engaged in some negotiations, that
4 the Government can be held in default. That even if they
5 don't manifest acceptance or written rejection that
6 somehow they can be held to an agreement.

7 And I'm not aware of any provision of the
8 criminal law, the criminal rules of procedure that would
9 force either party under any circumstances to be put into
10 an agreement that they didn't sign off on or certainly an
11 agreement that they manifest to the Court in open court
12 they disagree with it, they have no intention of entering
13 that agreement, that they could somehow be held to it.
14 I'm just not aware of any aspect of the law or the rules
15 of court that would allow that.

16 **MR. GORDON HALL:** Is there any record in
17 opposition to said record?

18 **MR. WATKINS:** Your Honor --

19 **THE COURT:** Yes?

20 **MR. WATKINS:** I want to put on the record at
21 this point you've entered an order that they're not to
22 file things except through counsel. I've not filed any
23 motion for contempt or anything like that to enforce that,
24 though I've been inundated with filings.

25 I just want to put everyone on notice, Your

1 Honor, the next filing the Government sees that's in
2 disregard of this Court's order, it will be moving for
3 contempt and sanctions, whether that be asking that they
4 be removed from general population to solitary
5 confinement, or whatever we can do at this point.

6 We've been patient, Your Honor. We should be in
7 trial right now. We were -- I was ready to go to trial.
8 I filed my trial brief, jury instructions. And with the
9 hope there would be some good faith negot -- or just plain
10 speaking.

11 **THE COURT:** Right.

12 **MR. WATKINS:** And here we are with these
13 gamesmanships with the battle of the forms. I'm --

14 **THE COURT:** Okay. And the Court will address
15 that.

16 I remind you, Mr. Gordon Hall, again, you are
17 not to submit any filings to this Court. All such filings
18 shall be through your counsel, Mr. Stepp.

19 I remind you that violation of any of the
20 Court's orders, you could find yourself in a contempt
21 proceeding before this Court as being violative of that
22 order. If you wish to submit any plea negotiations, they
23 have to go through your counsel.

24 Only because I believed that you all were trying
25 to get some true resolution to this case did I allow the

1 Government to sit with you through your counsel. But I
2 see now that you need to be made clear to understand that
3 that does not mean that just because I allowed the
4 Government to speak directly to you while your counsel was
5 sitting there that that allows you to engage in
6 conversations with the Government in written or oral
7 communications on your own.

8 All such communications or correspondence must
9 go through your counsel. Any filings with the Court could
10 be deemed to be in contempt of this Court's oral order now
11 and then my two, if not more, previous written rulings in
12 that regard.

13 Okay. This proceeding is concluded.

14 MR. WATKINS: Thank you, Your Honor.

15 (WHEREUPON, Defendant Gordon Hall left the
16 courtroom.)

17 * * *

18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20
21 s/Karen E. Martin

12/14/2013

22 _____
Karen E. Martin, RMR, CRR

Date _____

23
24
25
Karen E. Martin, RMR, CRR
US District Court
District of South Carolina